IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 61 of 1994

with

Civil Application No.11475 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHHANABHAI PANTHIBHAI VADI

Versus

BRAHMKHSHATRIYA SEVA SAMAJ

Appearance:

MR NK MAJMUDAR for Petitioners

MR KV SHELAT for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 19/04/2001

ORAL JUDGEMENT

1. The appellants (original defendants), by filling this Second Appeal under Section 100 of the Code of Civil Procedure, 1908 ('Code' for short), have challenged the judgment and decree dated December 14, 1993, passed by the learned 2nd Joint District Judge, Mehsana, in Regular Civil Appeal No.120 of 1992, by which judgment and decree, the lower Appellate Court dismissed the appeal and confirmed the judgment and decree dated September 30, 1992 passed by the learned Civil Judge (J.D.), Patan, in Regular Civil Suit No. 157 of 1985, decreeing the suit

filed by the respondents (original plaintiffs) by issuing mandatory injunction against the appellants to remove their huts from the trust property bearing Survey No.114, City Survey No.108, and Survey No.1768, situated in town Patan, within one month from the date of the decree.

2. The respondents are Trustees of the Trust, known as Shree Brahmkhshatriya Seva Samaj. The Trust, which is registered under the provisions of the Bombay Public Trust Act, 1950, owns land admeasuring 1 Acre 35 Gunthas situated in town Patan near railway culvert on the road which leads to market yard bearing Survey Nos.114, City Survey No.108 and Survey No.1768. On the part of the said land, one hostel in the name of Tejaji Farashram Kharavala Brahamkshatriya Chhatralaya is also situated and all the four sides of the land are covered by barbed wire fencing. The plaintiff-Trust is the owner as well in possession of the said land which was granted to the Trust by the State of Gujarat. According to the respondents, the appellants committed trespass on the eastern part of the suit land on May 5, 1981 by cutting the wire fencing. The appellants illegally constructed huts with the help of bamboos on the suit land, for which, a criminal complaint was filed by the Trustees of the respondent-Trust, which was registered as Criminal Case No.953 of 1981 in the Court of learned Judicial Magistrate, First Class, Patan. It is the case of the respondents that, in spite of their raising objection, the appellants had constructed four huts admeasuring 15 ft x 15 ft on the eastern part of land bearing Survey No.1768, which was more particularly described in plaint paragraph 5. The Trustees of the respondent-Trust made several requests to the appellants to remove their huts, but they did not pay any heed and, therefore, the Trustees of the respondent-Trust were constrained to file Regular Civil Suit No.157 of 1985 in the Court of learned Civil Judge (J.D.), Patan, against the appellants for mandatory injunction directing them to remove the huts and restraining them from causing further encroachment on the suit land.

3. The suit filed by the Trustees of the respondent-Trust was contested by the appellants by filing written statement at Exh.14, inter alia, contending that the suit land did not belong to the respondent-Trust. It was contended that the Assistant Collector, Patan, has held that no possession of the suit land admeasuring 1 Acre 35 gunths was handed over to the Trustees of the respondent-Trust. It was the case of the appellants that the suit land was of the ownership of the Government and they had constructed the huts on the land

belonging to the Government. It was further contended that, as the defendants were in actual and physical possession of the sit land since last 25 years to the knowledge of the respondents, they had become owners of the suit land by adverse possession. It was further contended that,as the land belonged to the Government, the suit was bad for non-joinder of necessary party as the State of Gujarat was not joined as party-defendant, and the suit was liable to be dismissed.

4. On the rival pleadings of the parties, learned Civil Judge (J.D.), Patan, framed issues at Exh.27. The plaintiffs in support of their case examined (1) Rashmikant Mafatlal at Exh.53, (2) Khemchandbhai Manabhai Parmar, Maintenance Surveyor of City Survey Department, at Exh.68 and (3) Babulal Nathalal Joshi, Superintendent of the Hostel, situated on the suit land, at Exh.97. The plaintiffs produced voluminous documentary evidence consisting of extracts of PTR Register, revenue records of Survey No.114/p and City Survey No.1768 Exh.55, the order of the Deputy Collector at Exh.63, village form No.4 at Exh.70, map prepared by City Survey Officer Exh.71, Court Commissioner Report at Exh.81, etc. On behalf of the defendants, defendant No.1, Chhanabhai Parthibhai Exh.75, Gopalbhai Jivabhai Exh.83, Gambhirji Motiji Thakor Exh.84 were examined. The defendants produced documentary evidence such as application made by the defendants to the Revenue Minister at Exh.76 and ration cards at Exh.77 to Exh.80.

5. The learned trial Judge, on appreciation of oral as well as documentary evidence, held that (1) the plaintiffs had proved that the defendants had illegally encroached on the suit land; (2) the plaintiffs were entitled to mandatory injunction directing the defendants to remove four huts constructed on the suit land; (3) the plaintiffs had proved that they were owners of the suit and and encroached land on which illegal huts were constructed by the defendants; (4) the defendants had failed to prove that they were occupying the suit land since last 25 years and had become owners by adverse possession; (5) the suit was bad for non-joinder of parties; and (6) the Court had jurisdiction to try the suit and the suit was filed on proper court fees. On the basis of the abovereferred to conclusions, the learned trial judge, by judgment and decree dated September 30, 1992, decreed the suit filed by the plaintiffs. The said decree was challenged by the appellants by filing Regular Civil Appeal No.120 of 1992 in the District Court, Mehsana. The learned 2nd Joint District Judge, Mehsana, after hearing arguments of respective parties, and on

perusal of oral as well as documentary evidence by judgment and decree dated December 14, 1993, confirmed the above findings recorded by the learned trial Judge, which has given rise to filing of the present Second Appeal by the original defendants.

6. The learned advocate, Mr. N.K. Majmudar, appearing for the appellants, and the learned advocate, Mr.K.V. Shelat, appearing for the respondents, have taken me through the entire record and proceedings of the Regular Civil Appeal No.120 of 1992 and Regular Civil Suit No. 157 of 1985.

7. The learned advocate, Mr. N.K. Majmudar, for the appellants, has submitted that the suit land belonged to the State Government and the possession of the suit was never handed over to the plaintiffs, It is, further, submitted that the State Government was a necessary party to the suit, and the suit ought to have been dismissed on the ground of non-joinder of the necessary party inasmuch as the suit land belonged to the State Government and, therefore, the suit filed by the respondents was not maintainable as the State Government was not joined as party. The learned advocate for the appellants further submitted that the appellants, by oral as well as documentary evidence, had established that they were occupying the suit land since last 25 years and, therefore, they had become owners by adverse possession.

8. The learned advocate, Mr. K.V. Shelat, for the respondents, has vehemently submitted that the plaintiffs had established, by leading cogent evidence, oral as well as documentary, that the State Government had granted suit land admeasuring 1 Acre 35 Guntahs to the plaintiff-Trust and the oral evidence of the Maintenance Surveyor of the City Survey Department, Patan, Khemchandbhai Manabhai Parmar, had proved that the Government had granted the suit land to the plaintiff-Trust. The learned advocate for the respondents further submitted that the evidence led by the defendants was inconsistent with regard to their encroachment of suit land and the Courts below had rightly rejected their evidence that they were occupying the suit land since last 25 years. The learned advocate for the respondents, further, submitted that, when both the Courts below concurrently held that the appellants had illegally encroached the suit land in the year 1981 and had not acquired any right over the suit land by adverse possession, this Court, in Second Appeal, cannot interfere with those findings and the appeal be dismissed with costs.

9. The submission of the learned advocate for the appellants that the suit land belonged to the State Government and, as the State Government was not made a party to the suit, the suit ought to have been dismissed for want of necessary party, deserves to be rejected. The documentary evidence, in the nature of revenue records and the order of the Revenue Authorities, clearly established that the respondent-Trust had become owner of the suit land admeasuring 1 Acre 35 gunthas and, therefore, the suit filed by the plaintiffs was, essentially, a suit between the owner and the trespasser in which the Government was not concerned, at all. Therefore, in my opinion, as the State Government is not owner of the suit land, it was not necessary for the plaintiffs to join the State Government as party-defendant in the suit.

10. Incidentally, it was argued by the learned advocate for the appellants that the order of the Deputy Collector indicated that the plaintiffs had never become owners of the suit land and the suit land was a disputed land, on which, other parties had also claimed ownership. In my opinion, this submission does not deserve any merit and is liable to be rejected. The order of the Deputy Collector dated September 17, 1991, Exh.63, on which the learned advocates for the appellants has tried to place reliance, relates to a dispute between the plaintiffs and one Sevantilal Laherchand Salvi, as said Sevantilal was claiming some right on some part of the disputed land. It was not a dispute between the Government and the plaintiff-Trust.

11. Another submission of the learned advocate for the appellants that the appellants had constructed their huts before 25 years of filing of the suit and they had become owners by adverse possession, also deserves to be rejected. The Courts below had, on proper appreciation of oral evidence, had come to the conclusion that the evidence led by the defendants and their witnesses was inconsistent with regard to appellants' having occupied the suit land before 25 years of filing of the suit. On the contrary, the documentary evidence in the nature of ration-cards showed that the said ration cards related to the year 1981, which corroborated the plaintiffs' case that the defendants had illegally trespassed over the suit land by cutting barbed wire fencing and constructing four huts on the suit land on May 5, 1981. The learned trial Judge, in his judgment, had specifically held that the defendants had produced inconsistent evidence with regard to occupying the suit land before 25 years of

filing of the suit and the defendants, in support of their case, had not produced any cogent evidence, either oral or documentary, to prove their possession on the suit land prior to 25 years of the filing of the suit. The learned trial Judge had categorically held that the defendants had encroached on the suit land in the year 1981 which was proved by the plaintiffs by producing certified copy of the complaint which they had lodged against the defendants in the Court of learned Judicial Magistrate, First Class, Patan, on May 5, 1981. A party, who asserts the right of having become owner by adverse possession, has to prove that the possession over the disputed land was prior to 12 years of filing of the suit within the knowledge of the owners. The Courts below have rightly held that, in view of inconsistent evidence produced by the appellants-defendants, the defendants had failed to prove that they had become owners of the suit land by adverse possession.

12. The learned advocate for the appellants has also submitted that the Courts below had not properly appreciated the nature and ownership of the suit land and, therefore, the case is required to be remanded for proper appreciation of documentary evidence afresh. In my opinion, this submission is also devoid of any merit and deserves to be rejected. The Courts below had committed no error in appreciating oral as well as documentary evidence produced on record, and in holding that the plaintiffs had proved their ownership over the suit land which exclusively belonged to the plaintiff-Trust. The extracts of the public trust register also amply proved the suit land exclusively belonged to the plaintiff-Trust.

13. As a result of foregoing discussion, I find that there is no substance in this appeal and the same is dismissed with no order as to costs. The interim relief is vacated.

14. The learned advocate for the appellants has requested that the interim relief granted earlier may be extended for a period of eight weeks so as to enable the appellants to approach the higher forum challenging the judgment and order of this Court, by which, the decrees of the both the Courts below were confirmed.

15 Having heard by the learned advocates for the parties, in my opinion, the request made by the learned advocate for the appellants deserves to be accepted. The interim relief granted earlier is extended upto June 18, 2001, so as to the appellants to approach the higher

forum challenging the judgment and order of this Court.

16. In view of the judgment and order passed in Second Appeal No.61 of 1994, Civil Application No.11475 of 2000 filed by the respondents for vacation of stay granted earlier, does not survive and is disposed of accordingly. There shall be no order as to costs.

April 19, 2001 (M.H. Kadri, J.)
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